Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

WILLIAM DAVID AND JUDITH A. JAMIESON
–PETITIONERS

VS.

COMMISSIONER OF INTERNAL REVENUE SERVICE–
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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44 pp

QUESTIONS PRESENTED

1. Does the application of the alternative minimum tax (AMT) foreign tax credit limitation of 90% of the alternative minimum tax (as provided in Code Section 59(a)(2))override the US-Canada Income Tax Treaty and deny to Taxpayers the treaty tax credits claimed by taxpayers with respect to the actual double taxation of their income, which treaty tax credits were authorized and permitted by the *Elimination of Double Taxation provisions* of Article XXIV and the *Exception to the Saving Clause provisions* of paragraph 3 of Article XXIX of the Treaty.

2. Does a conflict exist (in tax year 1987 prior to TAMRA '88) between Code Section 59(a)(2)(A), which in effect limits the alternative minimum tax (AMT) foreign tax credits to 90 % of the AMT tax, and the tax credits proved by the *Elimination of Double Taxation provisions* of Article XXIV of the US-Canada Income Tax Treaty (the "Treaty") so as to require the application of the so called "later-in-time" and "last expression of the sovereign will" rules or the yielding, overriding or invalidation of the treaty provisions?

3. If there is such a conflict and overriding of the *Elimination of Double Taxation provisions* of Article XXIV of the Treaty by Code section 59(a)(2) due to the "later-in-time" rule in tax year 1987, does the *Exception to the Saving Clause provisions* of paragraph 3 of Article XXIX of the Treaty make the *Elimination of Double Taxation provisions* of Article XXIV superior by pre-empting and reserving the *Elimination of Double Taxation provisions* of Article XXIV as the exclusive solution for such double taxation, thereby allowing the claiming of treaty tax credits by Taxpayers for income subject to actual double taxation.

4. Can there be an overruling or invalidating of the *Elimination of Double Taxation provisions* of Article XXIV of the Treaty and the *Exception to the Saving Clause provisions* of Article XXIX of the Treaty or a requirement that the Treaty yield to Code AMT Section 59(a)(2) when there is no finding by the lower courts of a conflict and no determination by the lower courts that the Code and the Treaty can not be reconciled.

5. Does non Code Section 1012(aa)(2) of TAMRA '88 adopted November 10, 1988 retroactively overrule or invalidate the *Elimination of Double Taxation provisions* of Article XXIV of the Treaty or otherwise require the yielding to Code AMT Section 59(a)(2)(A) i) as such Treaty provisions existed throughout Taxpayers' tax year 1987 and ii) as such Treaty provisions were restated by the adoption of the Third Protocol to the Treaty prior to the Tax Court Decision on

November 20, 1995, so as to deny Taxpayers' claimed treaty tax credits and subject Taxpayers to double taxation?

6. Does non Code Section 1012(aa)(2) of TAMRA '88 adopted November 10, 1988 retroactively overrule or invalidate the *Exception to the Saving Clause provisions* of Article XXIX of the Treaty, which provision had pre-empted and reserved the *Elimination of Double Taxation provisions* as the exclusive solution for such double taxation or otherwise require the yielding to Code AMT Section 59(a)(2), both i) as such Treaty provisions existed throughout Taxpayers' tax year 1987 and ii) as such Treaty provisions were restated by the adoption of the Third Protocol prior to the Tax Court Decision on November 20, 1995, so as to deny Taxpayers' claimed treaty tax credits and subject Taxpayers to double taxation?

7. Does non Code Section 1012(aa)(2), adopted on November 10, 1988, by designating Code Section 59(a)(2) as applying not withstanding treaty obligations in effect when Code Section 59(a)(2) was adopted on October 22, 1986 both retroactively and prospectively overrule or invalidate all treaties, and in particular those treaty provisions dealing with the elimination of double taxation, considering the requirement of Article II of the Constitution of the United States that treaties are made by the President, by and with the advise and consent of the Senate, provided two thirds of the Senators present concur?

8. Does the amendment of Code Section 7852 by TAMRA '88 on November 10, 1988 change the existing constitutional rules on conflicts between the laws of the United States and treaties made under the authority of the United States (which are both the supreme law of the land under Clause 2 of Article VI of the Constitution of the United States) so that the provisions of the Code and non Code sections relating to the Code, such as Section 1012(aa)(2) of TAMRA '88, if "later in time", are automatically superior or overriding of tax treaties without either a treaty amendment or a court determination of a conflict and a determination that the Code (and/or non Code provisions) and treaty provisions can not be reconciled?

9. Were the Taxpayers denied due process as a result of:

a) failure of the IRS to plead or assert Section 1012(aa)(2) as the basis of the denial of Taxpayer's claimed Treaty tax credits;
b) failure of the Tax Court to acknowledge or take judicial notice of the ratification and adoption of the Third Protocol to the US-Canada Income Tax Treaty as law;
c) failure of the IRS to publish or disclose to Taxpayers its policy on overruling and invalidating treaty provisions on double taxation, including retroactive application to tax year 1987 as well as the specific overruling and invalidation of the *Elimination of Double Taxation provisions* of ARTICLES XXIV of the Treaty and *Exception to the Saving Clause provisions* of Article XXIX of the Treaty and the denial and elimination of treaty tax credits for relief from double taxation; and
d) failure of the IRS to respond in any manner to Taxpayers principal claim under the *Exception to the Saving Clause provisions* of Article XXIX of the Treaty in the Court of Appeals and the failure of the Court of Appeals to address this issue which did not exist in the Lindsey v. Commissioner, 98 T.C. 672 (1992).

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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6 U.S. (2 Cranch) 64 (1804)
United States v. Gilmore, 372 U.S. 39 (1963)
Weinberger v. Rossi, 4356 U.S. 25 (1982)
Xerox Corp. v. United States, 42 F.3d 647 (Fed. Cir. 1994)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia appears at Appendix A to the petition and is reported at _____. The Memorandum Opinion T.C. Memo 1995-550 of the Tax Court appears at Appendix D to the petition and is reported at_____. The Order of the Tax Court appears at Appendix E to the petition

JURISDICTION

The date on which the United States Court of Appeals for the District of Columbia decided this case was October 10, 1997.

A timely petition for rehearing and suggestion for rehearing *In Banc* was denied by the United States Court of Appeals for the District of Columbia on November 17, 1997 and a copy of the order denying the motion for a rehearing appears at Appendix B and a copy of the order denying the suggestion for a rehearing *In Banc* appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. section 1254(1).

CONSTITUTION, TREATIES, STATUTES AND RULES

Constitution of the United States, Art. II
Constitution of the United States, Art. V
Constitution of the United States, Art. VI, Cl. 2

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding."

U. S.-Canada Income Tax Treaty (August 16, 1984)
paragraph 4, Article XXIV
paragraphs 2 and 3, Article XXIX Appendix F, p. 36
Third Protocol to the Treaty (November 9, 1995)
paragraph 4, Article XXIV
paragraphs 2 and 3, Article XXIX Appendix G, p.37
Internal Revenue Code Section 27
Internal Revenue Code Section 55(a)
Internal Revenue Code Section 59(a)(2) Appendix J, p.40
Internal Revenue Code Section 7852(d)(1) Appendix I, p.39
Tax Reform Act of 1986, Pub. L. No.99-514, 100Stat.2085
Technical and Miscellaneous Revenue Act of 1988, Pub.L.No.100-647, 102 Stat. 3342, Section 1012 Appendix H, p.38

OTHER

Restatement of the Law 3rd (1987) American Law Institute
Internal Revenue Proc. 91-23

STATEMENT OF THE CASE

Petitioners/Taxpayers, William David Jamieson and Judith A. Jamieson, are U.S. citizens and were resident of Canada during tax years 1986 and 1987. Mr. Jamieson was employed as an executive at a Canadian company during tax year 1987. Taxpayers' income was principally salary and interest earned in Canada from Canadian sources for tax year 1987. Taxpayers had small losses from rental of Taxpayers' home in Belmont, Massachusetts and small amounts of interest and dividend income for U.S. sources. Taxpayers' had no tax preference items, income or deductions.

Taxpayers' claimed foreign tax credits for tax year 1987 under the provisions of the Code, including foreign tax credits for the alternative minimum tax ("AMT"). Taxpayers claimed additional treaty tax credits for tax year 1987 pursuant to the *Elimination of Double Taxation provisions* of Articles XXIV and XXIX of the U.S.-Canada Income Tax Treaty (the "Treaty") with respect to amounts of income that were actually subject to double taxation. See Appendix F, p. 36.

Canada taxes Taxpayers on the basis of source of the income and taxes Taxpayers on their world wide income on the basis of Taxpayers' residency in Canada. The right of Canada to tax U.S. citizens resident in Canada is acknowledged and confirmed by the United States in the U.S.-Canada Income Tax Treaty which become effective on August 16, 1984. Canadian income taxes were deducted from Taxpayers' salary payments as salary payments were received. Taxpayers each filed individual Canadian T-1 tax returns in Canada for tax year 1987 in a timely manner, including all their world wide income in such tax returns Taxpayers paid Canadian income taxes of US$67,654 in 1987 on their world wide income.

The United States taxes US source income and the world wide income of US residents. Non resident US citizens (i.e. Taxpayers) are additionally taxed on their world wide income even though such income is not taxable by the United States on the basis of US source income or US residency of the recipient. Double taxation of the same income by Canada and the United States is eliminated by Code foreign tax credits,

by specific treaty provisions and finally by the general treaty elimination of double taxation provisions, such as the *Elimination of Double Taxation provisions* of Article XXIV and the *Exception to the Saving Clause provisions* of Article XXIX of the Treaty which provides additional treaty tax credits to eliminate actual double taxation.

Taxpayers filed IRS form 1040 income tax return for 1987, claiming foreign tax credits for income taxes paid to Canada as provided by the Code and treaty tax credits as provided by the *Elimination of Double Taxation provisions* of Article XXIV and the *Exception to the Saving Clause provisions* of Article XXIX of the Treaty. Taxpayers' 1987 tax return was consistent with filings for prior and subsequent tax years.

Taxpayers' 1987 tax return was filed late. No notice, assessment, inquiry, request or other communication had been sent by the IRS to Taxpayers or made by the IRS with respect to tax year 1987 prior to the filing by Taxpayers of their 1987 income tax return. Taxpayers are not contesting or objecting to the Tax Court finding of late filing and additional taxes for late filing of their 1987 tax return.

Taxpayers claimed treaty tax credits of $1,794 for tax year 1987 pursuant to the *Elimination of Double Taxation provisions* of Articles XXIV and XXIX of the Treaty. The IRS issued Notice of Deficience to Taxpayers on October 29, 1993, disallowing the treaty tax credits of $1,794 and assessing interest and penalties. Taxpayers filed their Petition with the Tax Court on January 31, 1994. A hearing was held on December 2, 1994 in Boston.

There is no disagreement that the amounts in dispute represent actual double taxation of the same income by both the United States and Canada.

The Third Protocol to the U.S.-Canada Income Tax Treaty was signed by both the United States and Canada on August 31, 1994, was amended by both countries on March 17, 1995, was ratified by the United States on August 11, 1995 and became effective on November 9, 1995 with the exchange of instruments of ratification. See Appendix G, p. 37. None of this information was provided or disclosed to the Tax Court or Taxpayers by the IRS. The Third Protocol amended and

restated relevant provisions of the *Elimination of Double Taxation provisions* of Articles XXIV and XXIX of the Treaty pursuant to which Taxpayers were claiming the treaty tax credits. The US-Canada Income Tax Treaty was in full force and effect though out all relevant periods to date.

On November 20, 1995 the Tax Court ruled in favor of the IRS with respect to tax year 1987 on the basis of the "later-in-time" rule pursuant to Lindsey v. Commissioner, 98 T.C. 672 (1992), affd. without published opinion 15 F.3d 1160 (D.C. Cir. 1994). The Tax Court held that the US-Canada Income Tax Treaty must yield to the application of section 59(a)(2) as the last expression of the sovereign will. Additionally the Tax Court noted that the Third Protocol was not effective. See Tax Court Memorandum Opinion at Appendix D, p. 31.

On December 21, 1995 the Taxpayers filed a motion to vacate or revise the Tax Court Memorandum Opinion noting that the Memorandum Opinion incorrectly stated that the Third Protocol has not been ratified by the United States and was, therefore, not effective. On March 12, 1996 the Tax Court denied Taxpayers' motion. See Appendix E, p. 34. The Order denying the motion failed to acknowledge that the Third Protocol, in fact, had become law, but did assert that if effective it would not apply in this case.

On June 10, 1996, the Taxpayers appealed the Tax Court Opinion and Order to the United States Court of Appeals for the District of Columbia. A hearing was held in Washington, D.C. on October 2, 1997. On October 22, 1997 the Court of Appeals affirmed the Tax Court orders filed November 24, 1994 and March 12, 1995 for substantially the reasons stated in the Tax Court's Memorandum Opinion filed November 20, 1994 and the Tax Court's Order filed March 12, 1996. See Appendix A, p. 25. On October 24, 1997, the Taxpayers filed a petition for rehearing and suggestion for rehearing *In Banc*, both of which were denied on November 17, 1997.

Taxpayers' have paid all the taxes and additional taxes with respect to 1987 in accordance with the Tax Court decisions, subject to final appeal. Taxpayers are also seeking refund of similar taxes paid in respect of the denial by the IRS of treaty tax credits claimed for tax year 1990 in the United States Court of Federal Claims (No. 95-692T) [filed on October 19, 1995 and stayed pending final disposition of this case.] The IRS is also seeking to deny treaty tax credits claimed by Taxpayers for tax year 1995.

REASONS FOR GRANTING THE PETITION

1. Basic Foreign Tax Credits-AMT Foreign Tax Credits-Treaty Tax Credits

There are many types of tax credits provided in the Code. In order to examine the alleged conflict between the Code and the treaty law, one needs to have an understanding of the tax credits involved in this matter. There are three different types of tax credits relevant to Taxpayers and this matter.

First; there are the basic foreign tax credits provided by Code Section 27-Foreign Tax Credit (the "Basic Foreign Tax Credits"),

Second: there are the alternative minimum tax foreign tax credits provided by Code Section 59(a) (the "AMT Foreign Tax Credits"), and

Third: there are the treaty tax credits provided by paragraph 4 of Article XXIV of the US-Canada Income Tax Treaty (the " Treaty Tax Credits").

Each of these tax credits are authorized by separate provisions of law and each have different purposes and limitations. They operate independently from each other. It should be noted that the Treaty Tax Credits are not defined as a foreign tax credit.

The claiming or use of Basic Foreign Tax Credits does not exclude or prevent the claiming of AMT Foreign Tax Credits or Treaty Tax Credits. The claiming or use of Treaty Tax Credits does not exclude or prevent the claiming of Basic Foreign Tax Credits or AMT Foreign Tax Credits. The claiming or use of AMT Foreign Tax Credits does not exclude or prevent the claiming of Basic Tax Credits (as accepted by the IRS with respect to Taxpayers tax year 1987) and, contrary to the lower court decisions, should not exclude or prevent the claiming of Treaty Tax Credits.

The 90% limitation set forth in Code AMT Section 59(a)(2) states that "The alternative minimum foreign tax credit for any taxable year shall not exceed...[90% of the alternative minimum tax]." This language does not directly or indirectly limit Taxpayers' claim of the Basic Foreign Tax Credits provided under Code Section 27 or Taxpayers' claims of the Treaty Tax Credit provided by the *Elimination of Double Taxation provisions* of paragraph 4 of Article XXIV of the U.S.-Canada Income Tax Treaty (the "Treaty").

The "alternative minimum foreign tax credit" referred to in Code Section 59(a)(2) is defined in Code Section 59(a)(1). The definition does not include the Treaty Tax Credits provided by paragraph 4 of Article XXIV of the Treaty or the Basic Foreign Tax Credits provided by Code Section 27. It should follow then, that Code Section 59(a)(2) does not limit the claiming of Treaty Tax Credits under the Treaty. The lower courts have in effect changed and amended both the definition of in Code Section 59(a)(1) and the limitation in 59(a)(2) to include the Treaty Tax Credits provided by the Treaty within the definition of AMT Foreign Tax Credits, even though there are no words in the two Code provisions to support such a result.

2. Lack of Conflict--Code Section 59 and Treaty Article XXIV

The rules of construction as well as court decisions require that treaties and domestic tax law be reconciled where possible. There should be no presumption of a conflict. If it is possible to reconcile the treaty and the statute, that is the meaning that should be used. Section 114 of the Restatement of the Law 3rd (1987), American Law Institute, Foreign Relation Law of United States "where fairly possible, a United States statute is to be construed so as not to conflict with international law or with an international agreement of the United States." Chief Justice Marshall stated "An Act of Congress ought never to be construed to violate the law of nations if an other possible construction remains...." Muray v. Schooner Charming Betsy, 6 U.S. (2Cranch) 64, 118 (1804). See Clark v. Allen, 331 U.S. 503 (1947), Weinberger v. Rossi, 456 U.S. 25 (1982) and Chew Heong v. United States, 112 U.S. 5361 (1884).

The Code and the alternative minimum tax (AMT) provisions within the Code are revenue measures. Both provide Basic Foreign Tax Credits and AMT Foreign Tax Credits in each instance of foreign income and foreign taxes. The AMT is a tax revenue measure that is intended to reduce tax deferrals and preferences where little or no actual taxes are being paid. Taxpayers problem is excessive double taxation.

The *Elimination of Double Taxation provisions* of the Treaty on the other hand are addressing situations of excessive double taxation created by two countries taxing the same income. The Treaty provisions allocate the taxes between the United States and Canada. The Treaty Tax Credits eliminate inequitable and unfair double taxation resulting from two jurisdictions taxing the same income without regard to the other. These Treaty provisions only operate in those situations where there is actual double taxation. This purpose and result does not conflict with any of the Code provisions or the general purposes of the income tax law.

The two laws operate at different times. Taxpayers first file their tax return in accordance, and in full compliance, with the Code, including Code AMT Section 59(a) and its 90% limitation. Taxpayers claim both their Basic Foreign Tax Credits and their AMT Foreign Tax Credits. If actual double taxation then remains after applying both of these Foreign Tax Credits, the Treaty Tax Credits provided by paragraph 4 of Article XXIV of the Treaty are only then applied to correct the actual double taxation of the same income by both the United States and Canada. The treaty mechanism would not have had to be tax credits, it could have been payments, refunds, or special tax deductions (used by Canada in some instances).

Nowhere in the legislative history of the 1986 Act or TAMRA '88 are there found words that support the IRS position that Congress intended that there be double taxation of non resident US citizens or that the *Elimination of Double Taxation provisions* of Articles XXIV and XXIX of the U.S.-Canada Income Tax Treaty must yield or be overridden or invalidated. There was no evidence or no finding by the lower court of a provision or intent to specifically overrule or invalidate either the *Elimination of Double Taxation provisions* of Article XXIV of the Treaty or the *Exception to the Saving Clause provisions* of

Article XXIX of the Treaty. There was no evidence or no finding by a lower court of any specific provision or specific intent to overrule or invalidate the general treaty provisions for elimination of double taxation. There was no evidence or no finding by the lower court of a specific provision or specific intent to create double taxation on non resident US citizens. Courts "should be slow to attribute to Congress a purpose producing such unequal treatment among taxpayers, resting on no rational foundation." United States v. Gilmore, 372 U.S. 39, 48 (1963). There is no conflict. Since there is no conflict , the so called "late-in-time" rule or "the last expression of the sovereign will' rule is not applicable.

3. Code Section 7852(d)

Code Section 7852(d) as amended on November 10, 1988 does not give the Code preferred status over treaties nor does it adopt the "later-in-time" rule. The Code can make any of its provisions subordinate to a treaty law. Section 7852(d) can not, however, make a Code provision superior to treaty law. Article VI Clause 2 of the Constitution makes both the Code and the Treaty the supreme law of the land. Both can make themselves subordinate to the other, but neither has the power to make its self superior to the other. Where apparent or alleged conflicts between the Code and treaties occur the courts are to determine if there is a conflict and are to reconcile them where possible.

The Court of Appeals has by its decision created a reverse pre-emption of (or exclusion of treaties from) what historically has been the exclusive domain of treaty law, the elimination of double taxation of the same income by the United States and other countries, such as Canada. The lower courts have in fact ruled in this case that all of the treaty law provisions of the many income tax treaties must yield to the Code and non resident US citizens are not entitled to relief from actual double taxation under treaty law. If this rule stands, a future revision to Code Section 59 (a)(2) that disallowed all AMT foreign Tax Credits could result in double taxation almost equal to the income being taxed.

4. Elimination of Double Taxation/US-Canada Income Tax Treaty

The principal function of tax treaties is to provide the method for avoiding double taxation and avoiding discrimination against residents of both jurisdictions. See Rev. Proc 91-23. This is accomplished by limiting the right of the United States or Canada to tax such income or by providing compensating credits or deductions. The *Elimination of Double Taxation provisions* of Articles XXIV and XXIX of the Treaty provides a final mechanism to eliminate double taxation when the Code sections provide inadequate or incomplete relief, when the tax laws of the two countries do not match up and specific treaty provisions to not work, and when changes to the tax laws of either country occur before a treaty correcting amendment can be adopted. The latter occurs often as the Code changes often, if not annually, where as treaty amendments often take many years. There were more than eleven years between the last two amendments to the US-Canada Income Tax Treaty. The *Elimination of Double Taxation provisions* of Articles XXIV of the Treaty are always there to address these tax problems.

Paragraph 4(b) of Article XXIV is clear and unequivocal . It is also mandatory. It states "Where a United States citizen is a resident of Canada...the United States shall allow as a credit against United States tax the income tax paid or accrued to Canada...." See Appendix F at p. 36. This provision remained exactly the same both before and after the adoption of the Third Protocol to the US-Canada Income Tax Treaty on November 9, 1995. See Appendix G at p. 37. There could be no stronger proof that there was no overruling of paragraph 4 of Article XXIV of the Treaty or that the Treaty was not to "yield to section 59(a)(2)" than the continuation of this same provision before and after the Third Protocol. The *Elimination of Double Taxation provisions* of Article XXIV of the Treaty should in all cases of double taxation be applicable to and fully available to Taxpayers.

5. Exception to the Treaty Savings Clause/US-Canada Income Tax Treaty

The usual treaty 'saving clause' is found in paragraph 2 of Article XXIX of the Treaty. It acknowledges the right of the United States to

make changes in the Internal Revenue Code and Canada to make changes to the Canadian Income Tax Act:

> 2.Except as provided in paragraph 3, nothing in the Convention shall be construed as preventing a Contracting State from taxing its residents (as determined under Article IV (Residence)) and, in the case of the United States, its citizen,... as if there were no convention between the United States and Canada with respect to taxes on income and on capital.

The saving clause provides or acknowledges that the United States and Canada as well are free to tax and to change tax laws except as provided in paragraph 3.

The exception to the savings clause identified in paragraph 2 of Article XXIX provides as follows;

> 3. The provisions of paragraph 2 shall not affect the obligation undertaken by a Contracting State:
>
> (a)Under... Articles...XXIV (Elimination of double Taxation)....

This exception to the saving clause prevents both the United States and Canada from adopting new tax laws or enforcing new or existing tax laws in a manner that would render inoperative the *Elimination of Double Taxation provisions* of Article XXIV of the Treaty. It was expected that there would be subsequent changes in the tax laws of the two countries which would result in double taxation or might conflict with the Treaty provisions, but that these *Elimination of Double Taxation provisions* of Article XXIV would prevail and would provide fair and equitable relief from double taxation. The goal or objective of elimination double taxation was seen by both the United States and Canada as a higher goal or objective than the raising of revenue by income taxes, whether by a regular tax or an alternative minimum tax.

6. Treaty–Clear Purpose of Avoidance of Double Taxation

In Xerox Corp v. United States, 42 F.3d 647, 660 (Fed. Cir. !994) where double taxation and treaty tax credits were issues, the court stated in its conclusion:

"Review of the evidence and arguments persuades us that the Treaty's meaning on this issue is plain and unambiguous, and that it should not be construed contrary to its clear purpose of avoidance of double taxation. It is inappropriate for courts to depart from the purpose and import of a treaty, 'particularly [when] there is no indication that application of the words of the treaty according to their obvious meaning effects a result inconsistent with the intent or expectations of the signatories.' Maximov v. United States, 373 U.S. 49, 54 (1963)." Xerox Corp. Id at 660.

The Tax court in Lindsey gave no meaning to the words of the treaty law. The lower courts in this case gave no meaning to the plain and unambiguous words of the Treaty law. The title of Article XXIV, *Elimination of double taxation*, and the language of paragraph 4 therein, "The United States shall allow as a credit....", convey a clear purpose and have an obvious meaning. The result of the lower courts' decisions is double taxation.

The final elimination of any actual double taxation was made the exclusive domain or jurisdiction of the *Elimination of Double Taxation provisions* of paragraph 4 of Article XXIV of the Treaty by the *Exception to the Saving Clause provisions* of paragraph 3 of Article XXIX of the Treaty. The power to ultimately resolve actual double taxation after exhausting the provisions of the Code (as well as any other treaty provision) was reserved exclusively to the Treaty. This unusual treaty provision is preemptive. Again the words of paragraph 3 of Article XXIX are plain and unambiguous. "The provisions of [the savings clause] shall not affect the obligations undertaken by a Contracting State...under .....Articles...XXIV (Elimination of Double Taxation)...;" These words convey a clear purpose and obvious meaning. The result of the lower courts decision results in double taxation and an unnecessary breach of an international treaty with the United States' major trading country.

7. Lindsey v. Commissioner

The Court of appeals decision affirmed without opinion the Tax Court Memorandum Opinion and Order for substantially the reasons set forth therein. The Tax Court held that "the U.S.-Canada Treaty must yield to the application of section 59(a)(2)." pursuant to Lindsey v. Commissioner, 98 T.C. 672, 676 (1991), affd. without published opinion 15 F.3d 1160 (D.C. Cir. 1994). The Tax Court quoted Lindsey "when a treaty and an act of Congress conflict 'the last expression of the sovereign will must control'." Lindsey, supra at 676. See Appendix D, p. 31. In the subsequent Tax Court Order the Tax Court quoted the "later-in-time" rule pursuant to Lindsey. See Appendix E, p. 34.

In the Lindsey case, the Tax Court did not determine whether there was a conflict between the actual words or purpose of the two laws or whether there was any possible way to reconcile the two laws. The Tax court did not distinguish between the terms 'foreign tax credits' and 'treaty credits' or examine the definitions or either. The Tax Court stated:

"In short, Congress has dealt directly with the conflict presently before us. Requiring that in the context of a treaty conflict with the 90-percent limitation on the availability of the alternative minimum tax foreign tax credit under section 59(a)(2), the later-in-time rule shall prevail. Here, section 59(a)(2) is the last expression of the sovereign will. We therefore hold that notwithstanding the treaty, petitioner is subject to the limitations under section 59(a)(2)." Lindsey, supra at 676.

The Tax Court in Lindsey accepted without question the Congressional explanation that "The bill codifies application of the later-in-time rule with respect to the following provisions of the 1986 Act, notwithstanding any treaty provision in effect on the date of enactment of the 1986 Act (October 22, 1986):... section 701 of the Act (as it relates to the limitation on the use of foreign tax credits against minimum tax liability) [S. Rept. 100-445, at 319: emphasis added.]." Lindsey v. Commissioner, supra at 676. With this decision, the Tax Court has dropped the first and principle requirements of the rule of conflicts to determine if there is in fact a conflict and to determine if there is any possible way to reconcile the two laws.

There was no attempt by the Tax Court in the instant case to determine if there was a conflict with either the *Elimination of Double Taxation provisions* of paragraph 4 of Article XXIV of the Treaty or the *Exception to the Saving Clause provisions* of paragraph 3 of Article XXIX of the Treaty. Nor was there any attempt to see if Code AMT Section 59 (a) could be possibly reconciled with either of these Treaty provisions. Even though the Taxpayers claimed the benefits of the *Exception to the Saving Clause provisions* of paragraph 3 of Article XXIX of the Treaty, a provision that did not exist in the Swiss treaty or the Lindsey case, the Tax Court made no analysis or finding with respect to this Treaty law. The IRS on appeal did not respond or comment in any manner to this Treaty law or Taxpayers' claim thereunder and the Court of Appeals did not address this Treaty law or Taxpayers' claim thereunder.

8. Due Process

The IRS has no written or disclosed policy on overruling of treaty laws or the denial of Treaty Tax Credits. The IRS did not advise Taxpayers that any portion of the US-Canada Income Tax Treaty has been invalidated, overruled or made unavailable to Taxpayers. The IRS failed to advise the Tax Court or the Taxpayers of the signing, ratification or the effective date of the Third Protocol to the Treaty during the proceedings before the Tax Court. In the Tax Court proceedings the IRS failed to plead non Code Section 1012(aa)(2) of TAMRA '88, which Taxpayers believe to be the actual basis for the Tax Court denial of the Treaty Tax Credits claimed by Taxpayers. The IRS and the Tax Court cited and used the unpublished Court of Appeals decision in Lindsey v. Commissioner as precedent contrary to the Court Rule, D.C. Circuit Rule 28(c). Taxpayers' right to claim Treaty Tax Credits are being denied on the basis of a law not considered or before the Tax Court. The Tax Court's failure to take judicial notice of the Third Protocol as law and the IRS failure to even respond in the Court of Appeals to Taxpayers claims under the *Exception to the Saving Clause provisions* of paragraph 3 of Article XXIX of the Treaty denied Taxpayers the opportunity to discover and challenge the IRS position on this treaty law being invalidated. Taxpayers have therefore been denied due process in this matter.

9. Effect of Tax Court Decisions

Due to the actual operation of Code AMT Section 59 (a)(2) and the other Code sections, the only people effected by the decision in Lindsey v. Commissioner, supra, and this case are those non resident US citizens whose income consists primarily of retirement income and salary (earned income) from non US sources. Those non resident US citizens who have US source income which produces taxes equal to or greater than the 10% of foreign tax credits disallowed by the AMT do not experience any double taxation. Non resident US citizens with substantial US source interest, dividends or capital gains income are therefore not subject to any double tax of their income and do not have to claim treaty tax credits. The same is true with respect to non resident US citizens who have sufficiently large holdings in the US so as to legally shift sufficient income to the US so as to not be effected by the 90% limit of 59(a)(2). The result achieved by the Tax Court in the Lindsey and this decisions is totally inconsistent with the purpose of Code Section 59(a)(2) as intended by Congress.

Although the late filing of the income tax return by Taxpayers may be adverse in this Court's consideration of this petition, this is not an issue where the interested and affected parties, only non resident US citizens (i. e. persons) with non US source retirement and salary income, have the resources of a Xerox that is able to go so far as to gather the testimony of the treaty negotiators for the United States and former Tax Counsels for the Treasury to reveal the original purpose in such conflicting laws. The Treaty and the adoption of the Third Protocol provides a good factual basis to examine the many complex issues in this matter.

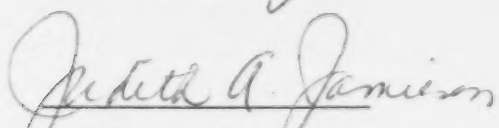
CONCLUSION

There is no conflict between Code AMT Section 59(a) and the *Elimination of Double Taxation provisions* of paragraph 4 of Article XXIV of the Treaty. The words of Code AMT Section 59(a) do not apply to either the Basic Foreign Tax Credits or the Treaty Tax Credits claimed by Taxpayers. Therefore the application of the so called "later-in-time" rule or "the last expression of the sovereign will must control" rule is incorrectly applied by the lower courts. Non Code Section 1012 is not retroactive and in any event should not invalidate a treaty law that is stated to be an exception to the savings clause and therefore pre-empted and reserved for the exclusive operation of the *Elimination of Double Taxation provisions* of paragraph 4 of Article XXIV of the Treaty. The Third Protocol confirmed that the *Elimination of Double Taxation provisions* of paragraph 4 of Article XXIV have remained in full force and effect and have not been overruled, invalidated or required to yield to Code Section 59(a)(2). The Taxpayers are entitled to claim the Treaty Tax Credits to eliminate double taxation

The petition for a writ of certiorari should be granted.

Respectfully submitted,

William David Jamieson



Judith A. Jamieson

APPENDIX A

UNITED STATE COURT OF APPEALS

For the District of Columbia

No 96-1197 **September Term, 1997**

William David Jamieson and
Judith A. Jamieson, Appellants Filed Oct 10, 1997
v.
Commission of Internal Revenue Service, Appellee

On Appeal from the United States Tax Court (No. 1834-94)

Before: Ginsburg, Randolph, and Tatel, Circuit Judges

JUDGMENT

This appeal was considered on the record from the United States Tax court and on the briefs and arguments of counsel. The court is satisfied that appropriate disposition of this case does not call for a published opinion. *See* D.C. Cir. Rule 36(b). It is here by

ORDERED and ADJUDGED that the tax court's orders filed November 24, 1995 and March 12, 1996, are affirmed substantially for the reasons stated in the tax court's memorandum opinion filed November 20, 1995 and in the tax court's order filed March 12, 1996.

The Clerk is directed to with hold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* D.C. Cir. Rule 41.

Per Curium
FOR THE COURT
Mark J. Langer, Clerk

APPENDIX B

UNITED STATE COURT OF APPEALS

For the District of Columbia

No 96-1197 **September Term, 1997**

William David Jamieson and
Judith A. Jamieson, Appellants Filed Nov 17, 1997
v.
Commission of Internal Revenue Service, Appellee

Before: Ginsburg, Randolph, and Tatel, Circuit Judges

ORDER

Upon consideration of appellants' petition for rehearing filed October 24, 1997, it is

ORDERED that the petition be denied.

Per Curium

FOR THE COURT
Mark J. Langer, Clerk
BY: Robert A Bonner
Deputy Clerk

APPENDIX C

UNITED STATE COURT OF APPEALS

For the District of Columbia

No 96-1197 **September Term, 1997**

William David Jamieson and
Judith A. Jamieson, Appellants Filed Nov 17, 1997
v.
Commission of Internal Revenue Service, Appellee

Before: Edwards, Chief Judge; Wald, Silberman, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, Tatel and Garland, Circuit Judges

ORDER

Upon consideration of appellants' Suggestion for Rehearing In Banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the suggestion be denied.

Per Curium

FOR THE COURT
Mark J. Langer, Clerk
BY: Robert A Bonner
Deputy Clerk

APPENDIX D

T. C. Memo. 1995-550

UNITED STATES TAX COURT

WILLIAM DAVID AND JUDITH A. JAMIESON, Petitioners
v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 1834-94 Filed November 20, 1995
William David Jamieson, pro se.
Louise R. Forbes, for respondent.

MEMORANDUM OPINION

COUVILLION, Special Trial Judge: This case was heard pursuant to section 7443A(b)(3)[1] and Rules 180, 181, and182.

By separate notices of deficiency, respondent determined the following deficiencies in and additions to petitioners' Federal income taxes:

		Additions to Tax	
Year	Deficiency	Sec.6651(a)(1)	Sec. 6653(a)(1)
1986	$1,998	$499.50	$99.90
1987	$1,794	$449.00	$90.00

1 Unless otherwise indicated, section references are to the Internal Revenue Code in effect for the years at issue. All Rule references are to the Tax Court Rules of Practice and Procedure.

Following concessions by the parties,[2] the issues for decision for the year 1987 are: (1) Whether petitioners are subject to the application of section 59(a)(2), which limits the amount of the alternative minimum tax foreign tax credit otherwise allowable under section 59(a)(1), and (2) whether petitioners are liable for the additions to tax under sections 6651(a)(1) and 6653(a)(1).

Some of the facts were stipulated, and those facts, with the annexed exhibits, are so found and are incorporated herein by reference. At the time the petition was filed, petitioners' legal residence was Saint John, New Brunswick, Canada.

Petitioners, nonresident United States citizens, have resided in Canada since 1979. William David Jamieson (petitioner), an attorney, is employed as vice president, corporate and legal, with The Irving Group in St. John, New Brunswick, Canada. Petitioners filed separate Canadian income tax returns and paid Canadian income taxes totaling $89,722.80 for tax year 1987.

On March 22, 1993, petitioners filed their U.S. Federal income tax return for tax year 1987. While petitioners reported some U.S. source income in the form of interest and dividends, most of the income reported was foreign source, taxable in Canada. Petitioners reported a tax liability for 1987 of $42,953.48 and claimed an alternative minimum foreign tax credit under section 59(a)(1) of $42,497.36.

Respondent determined that petitioners have an alternative minimum tax liability for 1987 under section 55(b)(1)(A) in the amount of $17,940, before the application of the section 59 (a) credit, and that section 59(a)(2) limits the amount of the alternative minimum tax foreign tax credit under section 59(a), which may be used to offset petitioners' alternative minimum tax liability to only 90 percent of such liability.

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2 In their pleadings, petitioners alleged that respondent was barred from assessing and collecting taxes against them for the years at issue because of the period of limitations under sec. 6501(a). In the answer, respondent denied the allegation and affirmatively alleged that respondent was not barred. At trial, petitioners conceded this issue. Also at trial, respondent conceded the deficiency and additions to tax against petitioners for 1986.

Petitioners do not dispute respondent's determination of their precredit alternative minimum tax under section 55(b)(1)(A). Petitioners argue, however, that the Convention Between the United States of America and Canada With Respect to Taxes on Income and on Capital (U.S.-Canada Treaty), Sept. 26, 1980, T.I.A.S. 11087, prohibits, as double taxation, the limitation of section 59(a)(2).[3] More specifically, petitioners contend that application of section 59(a)(2) violates Article XXIV(4)(b) and Article XXIX(2) and (3) of the U.S.-Canada Treaty.

Article XXIV(4)(b), Elimination of Double Taxation, provides, in pertinent part, "For the purposes of computing the United States tax, the United States shall allow as a credit against United States tax the income tax paid or accrued to Canada". Article XXIX(2) provides, in pertinent part, that nothing in the U.S.-Canada Treaty shall prevent the United States or Canada from taxing its citizens as if there were no convention between the U.S. and Canada with respect to income taxes on income and on capital. Article XXIX(3) provides, however, that the provisions of paragraph (2) shall not affect the obligations undertaken by the two countries with respect to Article XXIV, Elimination of Double Taxation.

Petitioners conclude that the above U.S.-Canada Treaty provisions forbidding double taxation of income override the provisions of section 59(a)(2). Citing Lindsey v. Commissioner, 98 T.C. 672 (1991), affd. without published opinion 15 F.3d 1160 (D.C.Cir. 1994), respondent contends that the limitations of section 59(a)(2), and not the treaty provisions, are controlling in this case. Under Lindsey v. Commissioner, supra, section 59(a)(2) limits the alternative minimum tax foreign tax credit available to petitioners.

The commissioner's determinations in a notice of deficiency are presumed correct, and the taxpayer bears the burden of proving that those determinations are erroneous. Rule 142(a); Welch v. Helvering,

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3 The treaty became effective on Aug. 16, 1984, having been signed on Sept. 26, 1980, and amended on June 14, 1983 and Mar. 28, 1984, and was in effect during 1987. The treaty was further amended on Aug. 31, 1994, but that amendment had not been ratified as of the date of this opinion.

290 U.S. 111, 115 (1933).

Section 55(a) imposes an alternative minimum tax. The determination of an individual's alternative minimum tax requires a recomputation of the taxable income leading to a new tax base, the alternative minimum taxable income. Sec. 55(b)(2). Section 59(a)(1) provides for an alternative minimum tax foreign tax credit for tax paid to a foreign government. However, section 59(a)(2) provides, in relevant part, that the alternative minimum tax foreign tax credit shall not exceed 90 percent of the tentative minimum tax liability calculated under section 55(b)(1)(A). Accordingly, in general, no more then 90 percent of the alternative minimum tax may be offset by the alternative minimum tax foreign tax credit available under section 59(a)(1).

In Lindsey v. Commissioner, supra, the taxpayer, a U.S. citizen residing in Switzerland, argued that the provision in the United States-Swiss Confederation Income Tax Convention forbidding double taxation should override the provisions of section 59(a)(2). After a detailed analysis of the legislative history of the relevant code sections, this Court concluded that, while section 59(a)(2) conflicted with the treaty provision, "when a treaty and an act of Congress conflict 'the last expression of the sovereign will must control'." Lindsey v. Commissioner, supra at 676, (quoting Chae Chan Ping v. United States (Chinese Exclusion Case), 130 U.S. 581, 600 (1889)).

The U.S.-Canada Treaty became effective on August 16, 1984. Section 59(a)(2) was enacted into law as part of the Tax Reform Act of 1986, Pub.L. 99-514, sec.701(a), 100 Stat. 2085, 2336-2337. This enactment was subsequent to the ratification of the U.S.-Canada Treaty. Therefore, pursuant to Lindsey v. Commissioner, supra, the U.S.-Canada Treaty must yield to the application of section 59(a)(2). Section 59(a)(2) is the last expression of the sovereign will. Accordingly, notwithstanding the U.S.-Canada Treaty, petitioners are subject to the limitations of section 59(a)(2).[4]

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4 The use of this "later-in-time" rule is supported by the provisions of the Technical & Miscellaneous Revenue Act of 1988 (TAMRA), Pub. L. 100-647, 102 Stat. 3342, 3531. See Lindsey v. Commissioner, 98 T.C. 672, 676-677 (1992). Pursuant to TAMRA, these provisions as enacted on Nov. 10, 1988, are

Petitioners alternatively argue that the third protocol, i.e., the amendment to the U.S.-Canada Treaty that was signed on August 31, 1994, contains language against double taxation similar to the U.S.-Canada Treaty in effect during 1987. As a later expression of the sovereign will, petitioners argue that the third protocol overrides section 59(a)(2). However, the third protocol has not been ratified by the United States and Canada and is, therefore, not effective. Moreover, the protocol provides generally that, upon the exchange of the instruments of ratification, the protocol will be effective on a prospective basis, rather than retroactively. Accordingly, in petitioners' case, section 59(a)(2) remains the last expression of the sovereign will. Respondent, therefore, is sustained on this issue.

Section 6651(a)(1) provides an addition to tax for the failure to file a timely income tax return, unless the failure to timely file is due to reasonable cause and not due to willful neglect. Section 6653(a)(1) provides an addition to tax if any part of the underpayment of tax is due to negligence or intentional disregard of rules or regulations. Negligence has been defined as a lack of due care or the failure to do what a reasonable and ordinarily prudent person would so under the circumstances. Marcello v. Commisioner, 380 F. 2d 499 (5th Cir. 1967), affg. in part and revg. in part T.C. Memo. 1964-299.

Petitioners filed their 1987 Federal income tax return on March 19, 1993. At trial, petitioner stated that on-going audits of his Canadian income tax returns by Revenue Canada since 1985, and the increased complexity of the Internal Revenue Code after the Tax Reform Act of 1986, interfered with the filing of petitioners' return. The audit of petitioners' Canadian returns, however, was completed and resolved sometime in 1989.

Petitioner is an attorney employed as the executive of a large

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effective for tax years beginning in 1987 and thereafter. See sec. 1012(aa)(4) of TAMRA. Since the year at issue in this case is 1987, the provisions are applied retroactively to petitioner. The Court finds that this period of retroactivity is a modest one and does not violate petitioner's right of due process. Tate & Lyle v. Commissioner, 103 T.C. 656, 675 (1994) (quoting U.S. v. Carlton, 512 U.S. __, __, 114 S. Ct. 2018, 2022 (1994)).

Canadian corporation. If petitioners did not have the expertise to file their 1987 return in an accurate and timely manner, they could have retained counsel or othe4 professional assistance. Despite the fact that their Canadian audit was completed in 1989, petitioners waited until March 19, 1993, to file their 1987 return. Petitioners' failure to file their 1987 return in a timely manner was not reasonable. Accordingly petitioners are liable for the addition to tax under section 6651(a)(1).

Petitioners failed to establish that they should not be held liable for the addition to tax under section 6653(a)(1). At the time petitioners filed their 1987 return, the Lindsey case had been decided by our Court. As a result, petitioners were on notice that the alternative minimum tax foreign tax credit claimed by them was calculated improperly.[5] Petitioners, therefore, are also liable for the addition to tax under section 6653(a)(1).

Decision will be entered for petitioners for 1986 and for respondent for 1987.

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5 Furthermore, the untimely filing of petitioners' return was negligent. See Emmons v. Commissioner, 92 T.C. 342 (1989), affd. on other grounds 898 F.2d 50 (5th Cir. 1990).

APPENDIX E

UNITED STATES TAX COURT
Washington, D.C. 20217

WILLIAM DAVID AND JUDITH A. JAMIESON,
Petitioner,

ix. Docket No. 1834-94

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ORDER

On December 21. 1995, petitioners filed a motion to vacate or revise decision (motion) entered in Jamieson v. Commissioner, T.C. Memo 1995-550, on November 24, 1995. An amendment to the motion was filed on January 16, 1996. Respondent filed a notice of objection on February 1, 1996. On February 13, 1996, petitioners filed a reply to respondent's notice of objection.

In Jamieson v. Commissioner, supra, this Court applied-the "later-in-time" rule, pursuant to Lindsey v. Commissioner, 98 T.C. 672 (1992), affd. without published opinion 15 F.3d 1160 (D.C. Cir. 1994), and held that the U.S.-Canada Treaty, which proscribes the double taxation of income, must yield to the application of section 59(a)(2). In response to petitioners' alternative argument that the third protocol, i.e. amendment, to the treaty was a later expression of the sovereign will, and thereby would, override section 59(a)(2), the Court found that, upon the exchange of the instruments of ratification, the protocol would be effective on a prospective basis rather than retroactively. Accordingly, in petitioners' case, section 59(a)(2) remained the last expression of the sovereign will.

In their motion, petitioners allege, in pertinent part, that the third protocol became effective on November 8, 1995, prior to the release of Jamieson v. Commissioner, supra, and thereby move that this Court vacate or revise the decision in that case. More specifically, petitioners argue that, upon its ratification, the third protocol became the last expression of sovereign will and thereby overrides the application of section 59(a)(2).

The third protocol provides, in pertinent part, "The Protocol shall be subject to ratification * * * [by] Canada and the United States and instruments of ratification shall be exchanged as soon as possible." The third protocol further provides "The Protocol shall enter into force upon the exchange of instruments of ratification". The Court finds that the third protocol was ratified by the United States on August 11, 1995, and by Canada on November 8, 1995. The court assumes that the instruments of ratification have been exchanged by the two countries. The Court further finds, however, that, with respect to the taxes at issue in this case, the third protocol is applied on a prospective basis. Article 1, paragraph 2 of the third protocol provides expressly that the Convention shall apply to the "taxes existing on March 17, 1995." Petitioners' case relates to taxes existing for the years 1986 and 1987, the due dates for payments were April 15, 1987, and April 15, 1988. Petitioners' taxes at issue in this case were not taxes existing on March 17, 1995. Moreover, see Article 21, paragraph 2 of the third protocol. Compare Article 21, paragraph 4 of the third protocol, which provides for the retroactive application of certain provisions relating to estate taxes. Therefore, regardless of its effective date, as the Court stated in Jamieson v. Commissioner, supra, section 59(a)(2) remains the last expression of the sovereign will in petitioners' case.

The Court has considered all other arguments raised by petitioners in their motion and, to the extent not discussed above, find them to be without merit.

Accordingly, it is

ORDERED that petitioners' motion to vacate and revise decision as amended is denied.

D. Irvin Couvillion
Special Trial Judge

Dated: Washington, D.C.
March 12, 1996

APPENDIX F

United States-Canada Income Tax Treaty [effective August 16, 1984 and as in effect until amended November 9, 1995-including Taxpayers' tax year 1987]

Article XXIV *Elimination of double taxation*

Paragraph 4 [US citizens resident in Canada]

> 4. Where a United States citizen is a resident of Canada, the following rules shall apply:
>
> (a).....
>
> (b) For the purposes of computing the United States tax, the United States shall allow as a credit against United States tax the income tax paid or accrued to Canada....

Article XXIX *Miscellaneous rules*

Paragraph 2 [Savings Clause]

> 2. Except as provided in paragraph 3, nothing in the Convention shall be construed as preventing a Contracting State from taxing its residents (as determined under Article IV (Residence)) and, in the case of the United States, its citizens...., as if there were no convention between the United States and Canada with respect to taxes on income and on capital.

Paragraph 3 [Exception to the Savings Clause]

> 3. The provisions of paragraph 2 shall not affect the obligations undertaken by a Contracting State:
>
> (a) Under...Articles...XXIV (Elimination of Double Taxation)...;

APPENDIX G

United States-Canada Income Tax Treaty
[as amended by the Third Protocol on November 9, 1995]

Article XXIV *Elimination of double taxation*

Paragraph 4 [US citizens resident in Canada]

> 4. Where a United States citizen is a resident of Canada, the following rules shall apply:
>
> (a).....
>
> (b) For the purposes of computing the United States tax, the United States shall allow as a credit against United States tax the income tax paid or accrued to Canada....

Article XXIX *Miscellaneous rules*

Paragraph 2 [Savings Clause]

> 2. Except as provided in paragraph 3, nothing in the Convention shall be construed as preventing a Contracting State from taxing its residents (as determined under Article IV (Residence)) and, in the case of the United States, its citizens...., as if there were no convention between the United States and Canada with respect to taxes on income and on capital.

Paragraph 3 [Exception to the Savings Clause]

> 3. The provisions of paragraph 2 shall not affect the obligations undertaken by a Contracting State:
>
> (a) Under...Articles...XXIV (Elimination of Double Taxation)...;

APPENDIX H

Technical And Miscellaneous Revenue Act of 1988,
Pub. L. No. 100-647, 102 Stat. 3342:[effective Nov. 10, 1988]

Section 1012. AMENDMENTS RELATED TO TITLE XII OF THE REFORM ACT.

. . . .

(aa) Coordination With Treaties.--

. . . .

(2) Certain Amendments to Apply Notwithstanding Treaties.-- The following amendments made by the Reform Act shall apply notwithstanding any treaty obligation of the United States in effect on the date of the enactment of the Reform Act:

(A) The amendments made by section 1201 of the Reform Act.

(B) The amendments made by the title VII of the Reform Act to the extent such amendments relate to the alternative minimum tax foreign tax credit.

. . . .

APPENDIX I

Internal Revenue Code of 1986

Section 7852. OTHER APPLICABLE RULES.

. . . .

(d) Treaty Obligations.--

(1) In General.–For purposes of determining the relationship between a provision of a treaty and any law of the United States affecting revenue, neither the treaty nor the law shall have preferential status by reason of its being a treaty or law.

(2) Savings Clause for 1954 Treaties.–No provision of this title (as in effect without regard to any amendment thereto enacted after August 16, 1954) shall apply in any case where its application would be contrary to any treaty obligation of the United States in effect on August 16, 1954.

. . . .

[effective November 10, 1988]

APPENDIX J

Internal Revenue Code of 1986

Section 59. OTHER DEFINITIONS AND SPECIAL RULES

(a) Alternative Minimum tax Foreign Tax Credit.–for purposes of the part–

. . . .

(2) Limitations to 90 Percent of Tax.--

(A) In General.–The alternative minimum tax foreign tax credit for any taxable year shall not exceed the excess (if any) of –

(i) The amount determined under section 55(b)(1)(A) for the taxable year, over

(ii) 10 percent of the amount which would be determined under section 55(b)(1)(A) without regard to the alternative tax net operation loss deduction and section 57 (a)(2)(E).

. . . .

[effective October 22, 1986]

APPENDIX K

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

WILLIAM DAVID AND JUDITH A. JAMIESON–PETITIONERS
VS.
COMMISSIONER OF INTERNAL REVENUE SERVICE–RESPONDENT

PROOF OF SERVICE

I, William David Jamieson, do swear or declare that on this date, February 16, 1998, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, be depositing a envelope containing the above documents in the United states mail properly addressed to each of them and with first-class postage prepaid.
The names and addresses of those served are as follows:

Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Avenue, N. W.
Washington , DC 20530-0001

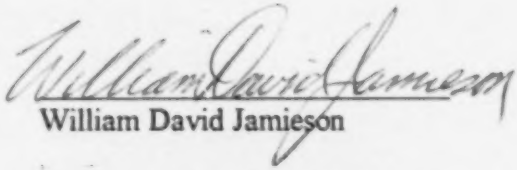
and

Commissioner of Internal Revenue
Internal Revenue Building
Constitution Avenue
Washington, DC 20044
Attention: Stuart L. Brown, Chief Counsel

and

Randolph L. Hutter, Attorney
Appellate Section, Tax Division
U.S. Department of Justice
P.O. Box 502
Washington, DC 20044

I declare under penalty of perjury that the foregoing is true and correct.
Executed on February 16, 1998.



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